

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY A. HOWELL and SHELLEY H.K.
HOWELL,

Plaintiffs,

v.

KENNETH VITORELO, et al.,

Defendants

No. C 07-6086 MMC

**ORDER DENYING AS MOOT
PLAINTIFFS' MOTION TO HAVE
AVERMENTS IN ANSWER DEEMED
ADMISSIONS AND STRIKE
AFFIRMATIVE DEFENSES; VACATING
HEARING**

Before the Court is plaintiffs "Motion to Have Averments in Defendants' Answer Deemed Admissions and to Strike Defendants' Affirmative Defenses," filed January 3, 2008. On January 9, 2008, defendants filed an Amended Answer to Plaintiffs' Complaint.

Under the Federal Rules of Civil Procedure, defendants' filing of an amended answer was timely. See Fed. R. Civ. P. 15(a).¹ "[A]n amended pleading supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De Bretteville, 239 F. 2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957).


Here, plaintiffs' motion challenges the adequacy of the contents of a pleading that,

¹"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served." Fed. R. Civ. P. 15(a).

1 as a result of the recent amendment thereof, has become "non-existent." Accordingly, the
2 Court hereby DENIES as moot plaintiffs' motion, and VACATES the hearing scheduled for
3 February 8, 2008.

4 **IT IS SO ORDERED.**

5
6 Dated: January 18, 2008


MAXINE M. CHESNEY
United States District Judge